IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1456 OF 2007

Ashok Manohar Sule & Anr.... .... Petitioners.
V/s
Santosh B. Mirkute.... .... Respondent.

Mr.J.M.Puranik, Adv. For the petitioners.

Mr.R.S.Datar, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
6/8/07

PC:

An application filed by the petitioner-defendant for filing written statement on record after a period of two years has been rejected by the trial Court and aggrieved thereby the present writ petition is filed. The petitioner-defendant was served with suit summons on 29.4.04. Thereafter on 12.7.04 the petitioner moved an application under section 9A for framing preliminary issue objecting to jurisdiction of the Court. The application came to be rejected by an order dated 12.9.06. It is as such clear that almost for a period of 2½ years no written statement was filed. After rejection of the application under section 9A belatedly the application came to be filed on 16.10.06 contending therein that as the application filed by the petitioner under section 9A was pending adjudication the petitioner did not file written statement. It is then stated in the application that limitation for the purpose of Order VIII

Rule 1 need to be treated from the date of decision on the preliminary issue. Finding said contention unacceptable the trial Court has rejected the application and declined to take written statement on record. Hence this writ petition. Though the provisions of Order VIII Rule 1 are directory in nature a departure from the same ought to be only in exceptional cases when justified grounds are urged and substantiated explaining the delay in filing of written statement. In the present case barring the contention that the limitation period need to be treated from the date of rejection of application under section 9A no other ground is stated. The application appears to be filed in most casual manner. There is no justification for the petitioner for not filing written statement for a period of 2 ½ years. Even otherwise perusal of the prayers of the plaint reveal that the plaintiff is seeking injunction not to disturb his possession and not to evict him except in accordance with due process of law. No interference is called for. Hence writ petition is summarily dismissed.

6.8.07